IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5290 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

RAMNIKLAL VRAJLAL UNADKAT

Appearance:

MR YOGESH S LAKHANI for Petitioner No. 1
MR CB DASTOOR for Respondent No. 1
NOTICE SERVED for Respondent No. 2
Mr.Siraj Gori, ASSTT GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/02/2002

ORAL JUDGEMENT

The present petition is filed for the relief of quashing and setting aside the order dated 15.3.1999 passed in Approval Application No.7 of 1998 by the

Conciliation Officer, a copy of which is produced at Annexure 'C', mainly on the ground that the Gujarat State Road Transport Corporation (for short "the Corporation") was not served with the notice issued by the Conciliation Officer and therefore the Corporation could not send its representative. It is also contended by the learned advocate appearing for the petitioner corporation that it is not correct on the part of the Conciliation officer to record in the order that he had called the parties from 8.9.1998 to 22.2.1999 and that the respondent workman had remained present in person and on behalf of the petitioner corporation no representative had remained present on any date of hearing.

2. Learned advocate Mr.Dastoor pointed out that the Conciliation Officer is joined as party respondent no.2 and he has filed an affidavit in reply. In the said affidavit, Conciliation Officer, Shri P.K. Vasavda has stated that on the application filed by the petitioner for getting approval under section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act") he had issued notice to both the parties by ordinary letter dated 24.8.1998 and hearing was fixed on 8.9.1998. It is stated on oath that on the said day both the parties were not present and therefore, the matter was adjourned to 19.12.1998. On that day, the respondent workman remained present and sought time. Therefore, the matter was adjourned to 5.1.1999. On that day both the parties were not present and therefore, the matter was adjourned to 22.2.1999. On 22.2.1999, the respondent workman remained present. Whereas nobody remained present on behalf of the petitioner corporation. The respondent workman submitted that he has given a reply by virtue of letter dated 27.8.1998 and has submitted his written statement also. The Conciliation officer, after hearing the respondent workman rejected the approval application. From the facts stated in the affidavit, it is clear that the Conciliation Officer had given a very casual approach to the approval application. It is his own case as stated in the affidavit that he issued notices to both the parties by ordinary letter. The notice was issued on 24.8.1998 and in no time respondent workman filed his reply on 27.8.1998. This Court is not going into details as to when the notice dated 24.8.1998 was served to the respondent workman but the fact remains that he filed reply on 27.8.1998. (emphasis supplied)

Mr.Dastoor, learned advocate appearing for the respondent workman submitted that the action of dismissal of the respondent workman (order dated 5.8.1998) is vitiated on

account of discrimination. He submitted that, when one Mr.C.P. Tank, who was working as Leave Clerk proceeded on 'leave before retirement' on 5.4.1997, the assignment of Leave Table was given to the respondent workman with two other persons, one Shri S.R. Limbad and another Shri R.J. Bhatt. Mr.Dastoor submitted that the department has not given similar treatment to these three persons who were assigned the 'leave table'. Mr.Dastoor has produced a letter along with his affidavit in reply, as Annexure IV issued by the Divisional Officer, Junagadh dated 28.11.1997. The contents of the letter reply the allegation of discrimination. Without going into the merits of the submissions of Mr.Dastoor that Article 14 applies even to the cases of persons who are alleged to have committed an irregularity is rejected outright. It is stated in para 3 of the letter that for Mr.Limbad and Mr.Bhatt, the assignment of Leave Table was totally of a new type and therefore, with a view to see that they do not commit any mistake, the authorities had so arranged that the work done by these two employees, namely, Mr.Limbad and Mr.Bhatt was supervised by one Senior Assistant, named Mr.A.M. Tisaiwala. It is not the case that the excess leave was credited to the accounts of the employees by these employees.

3. Mr.Dastoor, learned advocate for the respondent workman contended that in the present case, Mr.M.R. Rathod was the Administrative Officer and he was to sign the papers prepared by the present respondent workman. He being one of the signatory to the papers prepared by the respondent workman, it was not proper for him to participate in the departmental proceedings against the present respondent workman. The submission is without any merits. It is mentioned in para 14 of the Inquiry Report in reply to the contention raised before the Inquiry Officer that, 'the leave orders are signed by the Administrative Officer and therefore, he has no authority to prosecute this case. Same is replied by the Inquiry Officer by saying that, 'leave order' is a 'final outcome' and it is to be signed after the procedural part of accounting leave, debiting in the account of an employee is over. Therefore, there is no question of Administrative Officer being so interested in the matter that he cannot participate in the proceedings against the respondent workman. The Inquiry Officer has recorded that, 'no charge sheet is issued qua any of the leave order. Hence the contention of the respondent workman was rejected.

4. Mr.Dastoor, learned advocate relied upon the judgement dated 11.1.2001 of a Division Bench of this

Court (Coram: the Honourable the Chief Justice D.M. Dharmadhikari & Honourable Mr.Justice P.B. Majmudar) in Letters Patent Appeal No.221 of 2000 in Special Civil Application No.8233 of 1988. To the facts of the present case, said decision has no application. Mr.Dastoor also relied upon paras 4 and 5 of the judgement dated 30.3.2000 of this Court (Coram : H.K. Rathod, J.) in Special Civil Application No.5160 of 1999. In that particular case, the Court has taken a sympathetic view of the mater because it was pointed out by the learned counsel appearing for the respondent therein that recently on 2.1.2000, the respondent workman has died and therefore, now no question for any relief of reinstatement from the date of death of respondent workman survives. Said case also does not have any application to the facts of the present case.

5. Even otherwise, the impersonal approach of the officers of the government and public undertakings is noted by the courts day in and day out. The approach of Conciliation Officer in the present case who issued notice to the parties in a proceeding like Approval Application by ordinary post is an illustration of the same. He has then recorded a finding that, 'though he had called the parties from 8.9.1998 to 22.2.1999, nobody remained present on behalf of the petitioner corporation. In fact there were only four dates in the matter. Notice was issued on 24.8.1998. First date after notice was on 8.9.1998. On that day, matter was adjourned to 19.12.1998; that was the second date. On 19.12.1998 the case was adjourned to 5.1.1999; that was the third date. Lastly the case was adjourned to 22.2.1999; that was the fourth and final date, on which, the Conciliation Officer heard the respondent workman and after taking into consideration his reply and written statement rejected the approval application.

6. The facts of the case are grave enough to give serious though, by the Conciliation Officer before taking such casual approach in the matter of approval application. The respondent workman was serving for 18 long years with the petitioner Corporation. During this period he served at various places like Divisional Office at Una Depot, Divisional Office at Amreli, Establishment Branch at Jam Jodhpur Depot, Junagadh Depot and Divisional Office of Junagadh in Administration Branch. At more than one place it is recorded in clear terms that the respondent workman was in charge of the 'Leave Table' for long eight years and as he had passed B.Com. Examination he had good experience in accounting. On 'Leave Table' he was to keep account of leave enjoyed by

the employees. It is further recorded that out of 27 cases, in 23 irregularities were found. Surprisingly, every time the irregularity was in favour of an employee and not in favour of the employer. Not for a minute the Court is suggesting that if the mistake was in favour of the employer the Court would have taken a different view. But then it cannot be ignored that in all 23 cases, the mistake was in favour of the employee. In total, aggregating all the instances, 315 'leave' is credited in favour of the employees and calculating as suggested by the petitioner corporation, each leave worth Rs.200/-, the irregularity comes to Rs.63,000/-. In such a matter, casual approach of the Conciliation Officer cannot be allowed to stand.

7. The order passed by the Conciliation Officer is hereby quashed and set aside. Approval Application No.7 of 1998 stands allowed. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)

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